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July 19, 2012

Notice of Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *In the Matter of Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket 99-200; *Connect American Fund, et al.*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208

Dear Ms. Dortch:

On July 17, 2012, Erin Boone of Level 3 Communications, LLC, Greg Rogers of Bandwidth.com, Karen Reidy of COMPTEL, and I ("CLEC Participants") met with Julie Veach, Bureau Chief of the Wireline Competition Bureau, as well as Travis Litman, William Dever, Ann Stevens, Marilyn Jones, Sanford Williams, Kiara Williams, Victoria Goldberg, and Lisa Gelb. In the meeting, we discussed the CLEC Participants' urgent concerns with the petitions of Vonage and other petitioners ("Petitioners") for limited waiver of Section 52.15(g)(2)(i) to obtain direct access to number resources.

CLEC Participants emphasized that granting any of the Petitioners' waivers would be discriminatory vis à vis carriers that continue to comply with both federal and state rules. Further, CLEC Participants highlighted the heightened discriminatory consequence of granting some but not all waivers that are pending or may come before the Commission. Granting special *ad hoc* treatment for individual providers that provide them with competitive advantages would be arbitrary and capricious and a violation of due process. The appropriate process to change rules that will impact the industry broadly is a rulemaking, which would not only create a level playing field for all providers but is also required for the Commission to give due

consideration to the panoply of complex issues implicated by the requested waivers. These include likely complications relating to number exhaust, number portability, routing, interconnection, and intercarrier compensation.

While it is understandable that providers such as Vonage would appreciate special treatment outside established rules, the CLEC Participants, other industry participants, and the states have raised a number of valid concerns that can only be resolved through a rulemaking. For example, the Commission has never established requirements that would require a carrier to port numbers to a non-carrier. Such a port request is not "number portability," which is limited by statute to "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[1] To date, the Commission has only addressed "number portability" for VoIP services in the context of its 2007 *VoIP Number Portability Order* which was based upon the factual predicate that Commission rules firmly establish that numbers shall only be directly assigned to carriers.[2] That *Order* ***only*** addressed number portability in the context where a VoIP provider is either a carrier itself or is paired with a numbering partner that is a carrier such that the number is ported from one carrier to another.[3] Here, the number would need to be ported to non-carrier Petitioners such as Vonage. No such waiver has been granted since the 2007 *VoIP Number Portability Order*. Granting any of the non-carrier Petitioners waivers without first clarifying whether and pursuant to what legal authority there exists an obligation to port numbers to non-carriers would likely lead to porting disputes across the industry.

With respect to number exhaust, the CLEC Participants addressed the fact that the Commission has estimated that expanding to 12 or greater digit dialing would cost $50B to $150B.[4] Petitioners have not explained how they will obtain new Local Routing Numbers (LRNs) in every LATA in which they provide service without using up valuable number resources. In order to alter the requirement that local exchange carriers must obtain an LRN in every LATA, ATIS would have to change its requirements. If the Commission intends to go down this path, it should proceed via a rulemaking in order to give industry standard-setting bodies such as ATIS time to adapt to rule changes in an orderly manner. Absent such incremental change, there are likely to be issues not only with respect to number exhaust, but call routing, as well.

The CLEC Participants also explained that, although AT&T-IS received a waiver seven years ago: a) the CLEC Participants have never endorsed the prior waiver and, like Commissioners Copps and Adelstein in their concurring statements to the AT&T-IS waiver, believe that rulemakings represent a better process than *ad hoc* waivers; and b) the fact that

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[1] 47 U.S.C. § 153(30).
[2] *In the Matter of Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, ¶ 20 (rel. Nov. 8, 2007) ("*VoIP Number Portability Order*").
[3] *See, e.g., id.*, ¶ 35.
[4] *In the Matter of Telephone Number Resource Optimization*, CC Docket No. 99-200, Report and Order, FCC 00-04, ¶ 6 & fn. 10 (rel. Mar. 31, 2000) (*citing* NANC Meeting Minutes, Feb. 18-19, 1999, at 13).

AT&T-IS is affiliated with a carrier represents a material distinction in many respects. For example, the fact that AT&T-IS is not a carrier does not undermine the foreign affiliate reporting requirements because AT&T-IS's affiliate carrier companies must comply. By contrast, if any of the non-carrier Petitioners became affiliated with a foreign carrier, they would never have to report such affiliation to the Commission.[5]

The Commission has established that "an applicant for waiver bears a heavy burden," and that a waiver is justified only "if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest."[6] None of the Petitioners have met this heavy burden. Accordingly, the Commission should dismiss the petitions and avoid ceding to Petitioner demands for special *ad hoc* treatment. Although the CLEC Participants submit that the current system is working well, if the Commission is inclined to consider a rule change, it should proceed in a nondiscriminatory manner through a rulemaking that will determine how all participants in the industry are expected to perform and interact with one another.

As required by Section 1.1206(b), this ex parte notification is being filed electronically for inclusion in the public record of the above-referenced proceeding. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ James C. Falvey

James C. Falvey
Counsel for CLEC Participants

cc: Julie Veach
Travis Litman
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[5] *See* 47 C.F.R. § 63.11. *See also* 47 C.F.R. § 310 (Commission foreign ownership restrictions).
[6] *In the Matter of Administration of the North American Numbering Plan*, CC Docket 99-200, Order, CC Docket 99-200, ¶ 3 (rel. Feb. 1, 2005) ("*SBCIS Waiver Order*") (citations omitted, emphasis added).